

JENNIFER JOHNSON, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 4:09CV1078 CDP  
)  
JOE PHILLIPS, et al., )  
)  
Defendants. )

There are three pending motions in this case: plaintiff Johnson's motion for leave to take the video deposition of Joe Ernest Phillips, who is currently confined in prison, and two motions – one from each side – disputing plaintiff's recent designation of Police Chief Tim Fitch as a proposed expert witness. Defendants have not opposed Johnson's motion for leave to take the deposition, and I will grant that motion. For the reasons set out below, I will deny the motion to strike witness Fitch, but I will limit the testimony he is allowed to give.

Plaintiff did not disclose Chief Fitch as an expert witness within the time limit set by the Case Management Order. When plaintiff did disclose him, she did not provide a report, claiming that he is a “non-retained expert” who is not required to provide a report under Rule 26. I do not agree with the arguments that because the witness is not being paid he is converted into a “non-retained expert”

similar to a treating health care provider. Because his testimony will be based on “specialized knowledge,” he is considered an expert under Rule 702, Fed. R. Evid. His testimony on the subjects listed in paragraphs (a) through (e) of the plaintiff’s supplemental disclosure [docket entry # 23-1] will be helpful to the trier of fact and therefore I will not strike the designation. He may testify as to licensing requirements, the minimum standards for training, the meaning of police terms, and the duties and privileges of officers. He may not testify as to his opinion about whether the defendants violated any of these.


Because I do not believe defendants have been unfairly prejudiced, I will not require a further report, but defendants may take Chief Fitch’s deposition.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion for leave to take video deposition [#25] is GRANTED.

**IT IS FURTHER ORDERED** that defendant’s motion to strike plaintiff’s expert designation [#23] is DENIED.

**IT IS FURTHER ORDERED** that plaintiff’s motion for leave to designate expert out of time [#26] is GRANTED only to the extent specified above.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 19th day of August, 2010.